CIRCUMSTANCES UNDER WHICH POLITICAL SUBSCRIPTION FROM CORPORATE FUNDS IS LARCENY. — Section 528 of the New York Penal Code provides in part: "A person who, with intent to deprive or defraud the true owner of his property, or of the use or benefit thereof, or to appropriate the same to the use of the taker or any other person . . . having in his possession, custody or control as . . . officer of any . . . corporation . . . any money, . . . appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof, steals such property and is guilty of larceny." The relator, vice president, and a member of the finance committee of the New York Life Insurance Co., was arrested under this statute for larceny of the Company's funds. He brought writs of *habeas corpus* and *certiorari*, to test the sufficiency of the depositions on which the magistrate issued the warrant. The depositions showed that the defendant received money from the funds of the Company as reimbursement for money advanced by him as a campaign contribution, on behalf of the Company, to the Republican National Committee. The books of the Company did not disclose the purpose of the payment to the relator. The relator further deposed that he received no personal advantage from the transaction, that he acted solely in the interests of the Company and without misgivings as to the propriety of the act, believing a Republican victory essential to the prosperity of the Company. The action of the finance committee in assenting to the repayment was purely informal. The court dismissed the writs, on the ground that the depositions showed evidence sufficient to warrant a jury in finding that the relator had been guilty of larceny under the statute. *People ex rel. Perkins* v. *Reardon*, 35 N. Y. L. J. 226 (N. Y. Sup. Ct., April 19, 1906).

It is evident that the statute demands a specific intent to deprive the owner of his property,[1] and clearly the depositions of the relator to the effect that he had no suspicion of the illegality of his acts and acted for the sole purpose of benefiting the corporation are inconsistent with the existence of such an intent. It would appear, therefore, that what the court had to decide was simply whether the other facts deposed to were such as might justify a jury in finding that the above assertions of the relator were untrue.

The reasoning by which the court arrived at its conclusion is not altogether free from uncertainty. A large portion of the opinion is devoted to emphasizing a distinction between *ultra vires* acts illegal in themselves as against public policy and those merely unauthorized. If the distinction is taken merely to show that the specific intent to defraud is more easily inferable from the former sort of *ultra vires* acts this is undoubtedly correct. Much, however, that the learned judge says on this point may well leave it doubtful whether he is not proceeding on the theory that the illegality of the act supplies the necessary criminal intent. If this is, indeed, the theory of the decision it would seem manifestly incorrect, for, the required intent being specific, the doctrine of constructive intent has no application.[2]

In short, proceedings under this statute do not seem to involve the law of *ultra vires* at all, except in so far as the moral quality of the particular *ultra vires* act in question may aid in ascertaining *as a fact* the intention with which it was done, or, concretely, in negativing the relator's professions of ignorance of the law, and of benevolent intentions. From this point of view the

[1] People *v.* Moore, 37 Hun (N. Y.) 84.

[2] See May's Crim. Law (2d ed.) § 34; see Dobbs's Case, 2 East P. C. 513.

distinctions drawn by the court between different sorts of *ultra vires* acts were perhaps relevant, and the facts deposed to would certainly seem to have warranted the dismissal of the writs.

ACCEPTANCE OF A DEED OF CONVEYANCE BY THE GRANTEE. — In the usual case of a conveyance of land, acceptance by the grantee constitutes part of the delivery of the deed. A good delivery may be effected, however, where the deed is given to a third party for the grantee, or even where the grantor himself retains possession of the instrument.[1] In these two latter instances the question arises, how far an acceptance by the grantee, independent of such delivery, is essential to the passing of title. The English courts, though somewhat wavering, take the position that no acceptance is necessary.[2] The American courts, while ostensibly almost unanimous in asserting the necessity of acceptance,[3] are really in conflict on the question. The apparent weight of authority holds that where the deed is beneficial to the grantee, acceptance will be presumed in the absence of actual dissent;[4] but a strong minority of decisions insists that even here actual assent by the grantee is a prerequisite to the passing of title.[5] How far the presumption doctrine has been carried is well illustrated by a recent Arkansas case, where a deed running to the wife, duly executed and delivered by the husband to a third party, was held to pass an immediate title, although it plainly appeared that the wife was ignorant of the existence of the deed until after the death of the grantor. *Russell* v. *May*, 90 S. W. Rep. 617.

The modern rule requiring a grantee's assent to a conveyance is said to have been established to obviate the practical difficulty of having title with its possible burdens forced upon an unwilling grantee, and is based, as a matter of theory, upon the conception that the transaction is contractual in its nature.[6] The fact that an insane person is capable of taking as a grantee[7] is, however, fatal to the theory of the doctrine; and, on the practical side, though the requirement of actual consent does rescue a grantee from forced burdens, it also deprives him of benefits, since the rights of attaching creditors and other third parties against the grantor accruing between the delivery and assent, must prevail against the grantee.[8] The presumption of acceptance in the case of beneficial grants substantially relieves the latter situation, but at the expense of grafting another odious fiction upon the law. One situation, however, even this doctrine fails to meet satisfactorily. Where land is conveyed upon trust the deed cannot be regarded as beneficial to the grantee, and the basis of the presumption must fail, thus defeating the trust. The courts, however, have squarely met this situation by vesting title in the trustee without his assent, subject to the right of disclaimer.[9] The same rule is applied in the case of title passing to a devisee,[10] a disclaimer in either

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1 Thompson *v.* Candor, 60 Ill. 244; Exton *v.* Scott, 6 Sim. 31.
2 Thompson *v.* Leach, 2 Vent. 198; *cf.* Siggers *v.* Evans, 5 E. & B. 367.
3 But see Skipwith's Ex'r *v.* Cunningham, 8 Leigh (Va.) 271.
4 Mitchell *v.* Ryan, 3 Oh. St. 377; Wuester *v.* Folin, 60 Kan. 334.
5 Welch *v.* Sackett, 12 Wis. 243.
6 *Ibid.*
7 Campbell *v.* Kuhn, 45 Mich. 513.
8 Welch *v.* Sackett, *supra*; Knox *v.* Clark, 15 Col. App. 356.
9 Adams *v.* Adams, 21 Wall. (U. S.) 185; see Ames, Cases on Trusts, 2d ed., 229 n.
10 Tarr *v.* Robinson, 158 Pa. 60.